



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Dallas R. Sizemore
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

MXI ENVIRONMENTAL SERVICES, LLC
Registration No. 11447

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1309, - 1316, between the State Air Pollution Control Board and MXI Environmental Services, LLC regarding MXI for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the Regulations for the Control and Abatement of Air Pollution.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and - 1301.
2. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1 – 1185.
4. “Facility” means the MXI Environmental Services, LLC, facility located at 26319 Old Trail Road in Washington County, Virginia, and operates as a materials recovery facility.

5. "MXI" means MXI Environmental Services, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. MXI is a 'person' within the meaning of Va. Code § 10.1 – 1300.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1 – 1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "Permit" means the New Source Review (NSR) permit to construct and operate an evaporator and a natural gas/used oil-fired boiler which was issued under the Virginia Air Pollution Control Law and the Regulations to MXI Environmental Services, LLC on April 16, 2007.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 chapters 10 through 80.
10. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Facts and Conclusions of Law

1. MXI owns and operates the Facility in Washington County, Virginia. The Facility is a materials recovery facility.
2. The Facility is subject of the Permit which allows the company to operate an evaporator, boiler and distillation column in the recovery process.
3. On April 28, 2009, Department staff requested MXI to sample the input to the evaporator and cooling tower for weight percent of volatile organic compounds.
4. On May 4, 2009, Department staff conducted a Partial Compliance Evaluation of the Facility and collected liquid samples from the evaporator feed and the cooling tower for compliance with the requirements of the Virginia Air Pollution Control

Law, Permit, and the regulations. Based on the inspection and the follow-up information, Department staff made the following observations:

- a) On May 8, 2009, the Department received preliminary data for the samples taken from the evaporator feed and cooling tower on May 4, 2009. Certificate of Analysis was received on June 11, 2009 indicating still bottoms VOC weight percent as 3.4%.
 - b) On May 29, 2009, analysis results of the liquid samples taken from the evaporator feed by MXI on April 29, 2009 were received by the Department and indicated the still bottoms VOC weight percent as 0.53%.
5. Condition 3 of the Permit states that "Still bottoms throughput to the evaporator shall contain no more than 0.05 percent by weight of volatile organic compounds. A change in the still bottoms may require a permit to modify and operate. (9 VAC 5-0-1180)"
6. Condition 9 of the Permit states that "Emissions from the operation of the evaporator shall not exceed the limits specified below:
- | | | |
|----------------------------|------------|--------------|
| Volatile Organic Compounds | 2.08 lb/hr | 9.12 tons/yr |
|----------------------------|------------|--------------|
- These emissions are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits may be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Conditions 3 and 4. (9 VAC 5-80-1180)"
7. On June 4, 2009, Department staff met with representatives of MXI to discuss odor complaints, possible solutions, preliminary sampling results, pending enforcement action, and current the alleged violations.
8. On June 12, 2009, based on the inspection, follow-up information, the Department issued Notice of Violation No. 6-4-SWRO-2009 to MXI for the alleged violations described in paragraph C4 through C6 above.
9. On June 16, 2009, Department staff met with representatives of MXI to discuss the alleged violations.
10. On June 23, 2009, the Department received a response to the Notice of Violation from MXI.
11. Based on the results of the May 4, 2009 complaint investigation, the evaporator feed sample report results submitted to DEQ by MXI on May 29, 2009, and Certificate of Analysis of evaporator feed sample collected by DEQ on

May 4, 2009, the Board concluded that MXI has violated Permit Condition 3 as described in paragraphs C4 and C5 above

12. In order for MXI to return to compliance, DEQ staff and representatives of MXI have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and – 1316, the Board orders MXI and MXI agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$17,465 according to the payment schedule below in settlement of the violations cited in this Order.

The \$17, 465 civil charge shall be paid on the following schedule:

<u>DATE DUE</u>	<u>MINIMUM PAYMENT</u>
10/1/09	\$2,183 or balance due
1/1/10	\$2,183 or balance due
4/1/10	\$2,183 or balance due
7/1/10	\$2,183 or balance due
10/1/10	\$2,183 or balance due
1/1/11	\$2,183 or balance due
4/1/11	\$2,183 or balance due
7/1/11	\$2,184

Each payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

MXI shall include its Federal Employer Identification Number (FEIN) with each civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of MXI for good cause shown by MXI, or on its own motion pursuant to the Administrative Process Act Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, MXI admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. MXI consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. MXI declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by MXI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. MXI shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. MXI shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. MXI shall notify DEQ Regional Director verbally within 24 hours and in writing within three days when circumstances are

anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which MXI intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

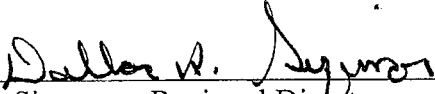
9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and MXI. Nevertheless, MXI agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a) MXI petitions the Director or his designee to terminate the order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order, or
 - b) the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to MXI.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve MXI from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by MXI and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of MXI certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind MXI to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of MXI.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, MXI voluntarily agrees to the issuance of this Order.

And it is ORDERED this 21st day of September, 2009


Dallas Sizemore, Regional Director
Department of Environmental Quality

MXI Environmental Services, LLC voluntarily agrees to the issuance of this Order.

Date: 16 Sep 2009 By: [Signature],
Brian Potter, Operations Manager
MXI Environmental Services, LLC

Commonwealth of Virginia

City/County of Washington

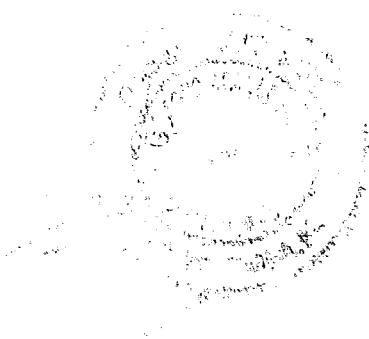
The foregoing document was signed and acknowledged before me this 16th day of
September, 2009 by Brian Potter who is
Operations Manager of MXI Environmental Services, LLC,
on behalf of the corporation.

[Signature]
Notary Public

186933
Registration No.

My commission expires: 04-30-2011

Notary Seal:



APPENDIX A
SCHEDULE OF COMPLIANCE

Until a permit modification is issued:

1. MXI shall store all evaporator water in storage tanks or transport off site to a waste water treatment facility for disposal.
2. Testing of the still bottoms, for compliance purposes, will not be required while evaporator water is being stored or transported off site.
3. MXI shall operate the cooling tower with only potable water.